

**A Jeramas Sdn Bhd & Anor v Datuk Wong Sze Phin @ Jimmy
Wong**

B COURT OF APPEAL — CIVIL APPEAL NO S-02(NCvC)fW)-1303–07
OF 2021
NANTHA BALAN, HASHIM HAMZAH JJCA AND ISMAIL BRAHIM J
17 SEPTEMBER 2024

C *Tort — Defamation — Defamatory statements — Judicial commissioner found*
that statements were not defamatory of appellants and defence of justification
established — Whether judicial commissioner erred in holding that defamatory
D *statements were not defamatory of appellants — Whether judicial commissioner*
erred in relying on case of Dr Shaari Isa & Anor v Tan Sri Harris bin Mohd Salleh
[2020] 4 MLJ 229 — Whether judicial commissioner erred in holding that
defence of justification and fair comment was established — Whether respondent
ought to properly particularised defence of justification and fair comment pursuant
to O 78 r 3(2) of Rules of Court 2012

E The appellants had filed a defamation suit against the respondent concerning a
press statement issue by the respondent on 19 July 2018 regarding the
appellants' alleged failure to comply with court's orders to demolish an
incomplete building on a piece of land in Sabindo, Tawau. The said order was
F in relation to a suit ('the Tawau case') to restrain the first appellant from
developing a piece of land in Tawau and in the said suit, the High Court
granted judgment against the first appellant. The said judgment was then
amended in 2016 to include a demolition order. The appellants' claim for
defamation was dismissed by the High Court, hence, the present appeal. The
G appellants submitted that the learned judicial commissioner ('the JC') had
erred: (a) in holding that the impugned statements were not defamatory of the
appellants; (b) in holding that the words used were not defamatory by wrongly
relying on *Dr Shaari Isa & Anor v Tan Sri Harris bin Mohd Salleh* [2020] 4
MLJ 229 ('*Dr Shaari's case*'), to require the appellants to plead and prove the
H defamatory meaning of each individual word or sentence, instead of
considering the statement as a whole; and (c) in holding that the defence of
justification and fair comments were available to the respondent as the
respondent had failed to properly particularise the defences of justification and
fair comment as required under O 78 r 3(2) of the Rules of Court 2012 ('the
I pleading point').

Held, dismissing the appellants' appeal and affirming the decision of the JC
with costs of RM20,000 to be given to the respondent subject to the payment
of allocatur:

- (1) The court had considered the appellants' arguments on the JC's reliance on *Dr Shaari's* case and the court opined that the JC's decision did not amount to misdirection which merited the intervention of the appellate court. This was because in arriving at his decision, the JC had also relied on other trite case laws on defamation such as *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720, *Lewis and another v Daily Telegraph Ltd; Same v Associated Newspapers Ltd* [1963] 2 All ER 151, *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334, and *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371. Based on paras 40 and 41 of the JC's judgment, it was clear that the JC had not only considered the impugned statements in its natural and ordinary meanings but had taken into consideration the whole articles. Having done so, the JC concluded that the impugned statements were not defamatory (see paras 15 & 18–19). A B C
- (2) From the JC's findings of fact which were amply supported by the evidence in the trial, the fundamental facts established by the evidence were these: (a) the existence of valid and binding demolition orders against the appellants which were affirmed by the Court of Appeal and the Federal Court; (b) the appellants' failure to comply with those orders despite having knowledge of the same; and (c) the resulting commencement of committal proceedings against the appellants. In the court's view, these were sufficient to establish the essential truth of the defamatory 'sting' that the appellants breached the court's orders. In the circumstances, the court did not see any reason to disturb the findings of facts made by the JC (see para 23). D E F
- (3) In relation to the pleading points, the court opined that the appellants' claim that the defences of justification and fair comment could not be relied upon due to insufficient particulars was without merit. It was important to note that the appellants' own pleadings on the alleged defamatory meanings were also lacking in specificity, as such, it would be unfair to expect the respondent to dissect every single sentence of his statement and label it as fact or comment when the appellants' own case was so vaguely presented (see para 26). G H
- (4) Certainly, the respondent could have provided more detailed particulars but considering how the appellants presented their case, the lack of extensive particulars was not fatal. The core of the defences, that the respondent's statements were based on established facts about the Sabindo dispute, was reasonably clear. The court also was of the view that the appellants had not demonstrated that the way the defences were pleaded caused them any significant prejudice. As the learned JC rightly noted, the appellants were fully aware of the nature of the respondent's I

A case and had every chance to either ask for more particulars or present evidence to challenge the pleaded defences. The appellants did the latter vigorously (see para 27).

[Bahasa Malaysia summary]

B Perayu-perayu telah memfailkan saman fitnah terhadap responden berhubung isu kenyataan akhbar oleh responden pada 19 Julai 2018 berhubung dakwaan kegagalan perayu-perayu untuk mematuhi perintah mahkamah untuk merobohkan bangunan yang terbengkalai di atas sebidang tanah di Sabindo, Tawau. Perintah tersebut adalah berkenaan dengan satu saman ('kes Tawau')

C untuk menghalang perayu pertama daripada membangunkan sebidang tanah di Tawau dan dalam saman tersebut, Mahkamah Tinggi memberikan penghakiman terhadap perayu pertama. Penghakiman tersebut kemudiannya dipinda pada 2016 untuk memasukkan perintah perobohan. Tuntutan fitnah

D perayu-perayu telah ditolak oleh Mahkamah Tinggi, oleh itu, rayuan semasa. Perayu-perayu berhujah bahawa pesuruhjaya kehakiman yang bijaksana ('PK') telah terkhilaf: (a) apabila memutuskan bahawa kenyataan yang disangkal tersebut tidak memfitnah perayu-perayu; (b) apabila memutuskan bahawa perkataan-perkataan yang digunakan tersebut adalah tidak memfitnah dengan

E secara salah bergantung kepada *Dr Shaari Isa & Anor v Tan Sri Harris bin Mohd Salleh* [2020] 4 MLJ 229 ('kes *Dr Shaari*'), untuk menghendaki perayu-perayu memplid dan membuktikan maksud fitnah bagi setiap satu perkataan atau ayat, dan bukannya mempertimbangkan kenyataan tersebut secara keseluruhan; dan (c) apabila memutuskan bahawa pembelaan justifikasi dan

F ulasan yang adil tersedia kepada responden kerana responden telah gagal memperincikan dengan sewajarnya pembelaan justifikasi dan ulasan yang adil seperti yang dikehendaki di bawah A 78 k 3(2) Kaedah-Kaedah Mahkamah 2012 ('poin pliding tersebut').

G **Diputuskan**, menolak rayuan perayu-perayu dan mengesahkan keputusan PK dengan kos sebanyak RM20,000 diberikan kepada responden tertakluk kepada alokatur:

(1) Mahkamah telah mempertimbangkan hujah perayu-perayu mengenai pergantungan PK terhadap *kes Dr Shaari* dan mahkamah berpendapat

H bahawa keputusan PK tidak berjumlah kepada salah arah yang memerlukan campur tangan mahkamah rayuan. Ini kerana dalam membuat keputusannya, PK juga bergantung kepada duluan-duluan kes lain yang telah mantap mengenai fitnah seperti *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720, *Lewis and another v Daily Telegraph Ltd*; *Same v Associated Newspaper Ltd* [1963] 2 All ER 151, *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334, dan *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371. Berdasarkan perenggan 40 dan 41

I penghakiman PK, adalah jelas bahawa PK tidak hanya

- mempertimbangkan kenyataan yang disangkal tersebut dalam makna semula jadi dan biasa tetapi telah mengambil kira keseluruhan artikel tersebut. Setelah berbuat demikian, PK membuat kesimpulan bahawa kenyataan yang disangkal tersebut tidak memfitnah (lihat perenggan 15 & 18–19).
- (2) Daripada dapatan-dapatan fakta PK yang disokong dengan secukupnya oleh keterangan dalam perbicaraan, fakta-fakta asas yang dibuktikan oleh keterangan tersebut adalah seperti berikut: (a) kewujudan perintah perobohan yang sah dan mengikat terhadap perayu-perayu yang disahkan oleh Mahkamah Rayuan dan Mahkamah Persekutuan; (b) kegagalan perayu-perayu untuk mematuhi perintah tersebut walaupun mempunyai pengetahuan tentang perkara yang sama; dan (c) akibatnya, prosiding komital dimulakan terhadap perayu-perayu. Pada pandangan mahkamah, ini sudah memadai untuk membuktikan kebenaran sebenar tentang ‘sting’ fitnah tersebut bahawa perayu-perayu telah melanggar perintah mahkamah. Dalam keadaan tersebut, mahkamah mendapati bahawa tiada apa-apa sebab untuk mengganggu dapatan-dapatan fakta yang dibuat oleh PK (lihat perenggan 23).
- (3) Berhubung dengan poin pliding tersebut, mahkamah berpendapat bahawa dakwaan perayu-perayu bahawa pembelaan justifikasi dan ulasan yang adil tidak boleh digunakan kerana butir-butir yang tidak mencukupi adalah tidak bermerit. Adalah penting untuk diambil perhatian bahawa pliding perayu-perayu sendiri mengenai maksud fitnah yang didakwa juga kurang spesifik, oleh itu, adalah tidak adil untuk mengharapkan responden untuk meneliti setiap ayat kenyataannya dan melabelkannya sebagai fakta atau ulasan sedangkan kes perayu-perayu sendiri telah dibentangkan dengan tidak jelas (lihat perenggan 26).
- (4) Responden tentunya boleh memberikan butiran yang lebih terperinci tetapi mengambil kira cara perayu-perayu membentangkan kes mereka, kekurangan butir-butir yang terperinci tidak membawa kemudatan. Inti pati pembelaan, bahawa kenyataan responden adalah berdasarkan fakta yang telah dibuktikan mengenai permasalahan Sabindo, adalah jelas. Mahkamah juga berpendapat bahawa perayu-perayu tidak menunjukkan bahawa cara pembelaan diplidkan menyebabkan apa-apa prejudis yang ketara terhadap mereka. Seperti yang dinyatakan oleh PK yang bijaksana, perayu-perayu mengetahui sepenuhnya sifat kes responden dan mempunyai setiap peluang untuk sama ada meminta butiran lanjut atau mengemukakan keterangan untuk mencabar pembelaan yang diplidkan. Perayu-perayu telah mengemukakan keterangan untuk mencabar pembelaan yang diplidkan dengan bersungguh-sungguh (lihat perenggan 27).]
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A Cases referred to

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)

Dr Shaari Isa & Anor v Tan Sri Harris bin Mohd Salleh [2020] 4 MLJ 229; [2020] 4 CLJ 40, CA (refd)

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JB Jeyaretnam v Goh Chok Tong [1985] 1 MLJ 334 (refd)

Keluarga Communication v Normala Samsudin [2006] 2 MLJ 700, CA (refd)

Lewis and another v Daily Telegraph Ltd; Same v Associated Newspaper Ltd [1963] 2 All ER 151, HL (refd)

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MMC Oil & Gas Engineering Sdn Bhd v Tan Bock Kwee & Sons Sdn Bhd [2016] 2 MLJ 428; [2016] 4 CLJ 665, CA (refd)

Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720; [2019] 3 CLJ 729, FC (refd)

D Legislation referred to

Rules of Court 2012 O 78 r 3(2)

Appeal from: *Jeramas Sdn Bhd & Anor v Datuk Wong Sze Phin @ Jimmy Wong* [2021] MLJU 2037 (High Court, Kota Kinabalu)

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Chung Jiun Dau (Chung & Assoc) for the appellant.

Mark Rosaidey Mohd Amin (Amin & Co) for the respondent.

Ismail Brahim J:

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INTRODUCTION

G [1] This is an appeal by Jeramas Sdn Bhd ('the first appellant') and Dato' Sri Kong Hoi Chieng ('the second appellant') against the decision of the High Court dated 11 June 2021 dismissing their claim for defamation against Datuk Wong Sze Phin @ Jimmy Wong ('the respondent').

H [2] The dispute arises from a press statement issued by the respondent on 19 July 2018 concerning the appellants' alleged failure to comply with court orders to demolish an incomplete building on a piece of land in Sabindo, Tawau ('the land').

BACKGROUND FACTS

I [3] The first appellant, a property developer, entered into a joint venture with the Tawau Municipal Council in 2004 to develop the land. The second appellant later acquired the first appellant. In 2005, a group of ten plaintiffs ('the litigants') commenced a suit against the first appellant and the council ('the Tawau suit') to restrain the development.

[4] In 2008, the first appellant and the council terminated their joint venture. The state government indicated it would retake the land. In 2009, the High Court granted judgment against the first appellant ('the 2009 judgment'), finding that the partially completed building erected by the first appellant was illegal and had to be removed as it constituted a nuisance. The first appellant's appeals to the Court of Appeal and Federal Court were dismissed. The litigants commenced committal proceedings (first committal) which was dismissed because the order did not stipulate that the first appellant was ordered to demolish the structure.

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[5] In 2016, the Tawau High Court amended the 2009 judgment to expressly include a demolition order ('the 2016 judgment'). The first appellant's further appeals were also dismissed. Despite a letter of demand from the litigants in January 2018 to comply with the demolition order, the first appellant failed to do so.

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[6] On 16 July 2018, the litigants filed a second committal application against the first appellant for non-compliance. On 19 July 2018, the respondent, who was the State Assemblyman for the constituency issued a press statement commenting on the first appellant's failure to abide by the court orders. This statement was published in two newspapers which is the subject matter of the defamation action by the appellants against the respondent.

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FINDINGS OF THE HIGH COURT

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[7] The learned judicial commissioner ('the learned JC') dismissed the appellants' claim. His Lordship's material findings can be summarised as follows:

- (a) the appellants' pleaded case on the defamatory meanings was deficient, as they failed to specify the precise words or passages said to bear those meanings. No innuendo meanings were pleaded;
- (b) on a full reading of the impugned articles, they were not capable of bearing the range of defamatory meanings alleged by the appellants, particularly when considered in light of the portions omitted from the pleadings concerning the first appellant's failed appeals against the demolition orders;
- (c) the respondent had made out a defence of justification as the essential sting of his comments, namely that the appellants were in breach of valid court orders, had been shown to be substantially true based on proven facts concerning the subsistence of the demolition orders and the first appellant's non-compliance which led to committal proceedings;
- (d) the respondent's comments also constituted fair comment as they were

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- A** recognisable as opinions on a matter of public interest based on true facts concerning the status of the court orders and the appellants' non-compliance therewith;
- B** (e) the statements were published on an occasion of qualified privilege as the respondent had a legitimate duty as the elected representative to update his constituents on the status of this long-standing public interest issue which he had campaigned on, and the constituents had a corresponding interest in receiving such updates; and
- C** (f) the appellants failed to prove express malice on the respondent's part to negate the qualified privilege or fair comment defences. The respondent was found to have been substantially truthful in his factual allegations and his dominant purpose was to discharge his duty to his constituents, not to injure the appellants.

D THE IMPUGNED STATEMENT

[8] In order to provide context, the full impugned statement is reproduced here:

E In the Daily Express report, the following words were published:

- F** (1) State Assistant Minister Jimmy Wong Sze Phin urged the developer of an unfinished building on the open space in Sabindo to demolish it soon as possible or risk being hauled up for contempt of Court.
- G** (2) Only by doing so would the Plaintiff withdraw the committal proceedings.
- H** (3) The Plaintiff, represented by Bishop James Wong, had filed an application for committal proceedings against the developer on July 17, 2018. It was made with the purpose to effectively allow the Court to have the power to make an order to punish the person who disobeyed a Court ruling or order.
- I** (4) Jimmy said given the nature of the breach is a criminal offence (contempt of court), in the event that the Court allows this application, the developer would be subject to legal sanctions.
- (5) In fact, the Plaintiff even offered the developer to share half the Court fees and contribute the balance of 50 per cent to the demolishing cost. Besides that, the Deputy Chief Minister cum Local Government and Housing Minister Datuk Jaujan Sambakong also promised to contribute 50 per cent of demolishing cost from his Ministry in this matter.
- (6) According to him, this is a fundamental principle that separates Malaysia as a democracy from others and hoped the developer could cooperate in this matter by demolishing the unfinished building on the respective public open space.

- (7) Meanwhile, Jimmy also apologised to the public if this unfinished building has not been demolished after 100 days, as he promised before the general election. A
- (8) I'm agreeing with the move of the Plaintiff to take legal action against the developer because the developer must be held responsible for what he did and he cannot be allowed to run scot free. B
- (9) As a people's representative, I have the obligation to protect the green lungs in Tawau and the interests of the Tawau people. Again, I must stress that there is a due process in serving justice and the law must take its course he cited. C
- (10) Jimmy also disclosed that it is important that the building is demolished and restored back to its original position. However, it is also equally important to ensure the rule of law and due process is respected.
- (11) Jimmy said this case has been more [than] a decade and yet justice has not been served. Clearly and unequivocally, the developer has acted in breach of the Court order. D
- (12) He said the defiance of the developer not to abide by the Court order shows that he does not respect the rule of law and legislations that are readily available in our country. E

In the Borneo Post report, the following words were published:

- (1) TAWAU: An application for committal proceedings against a developer and its director relating to the illegal building at the Sabindo open space was filed by the Plaintiff, Bishop James Wong, at the High Court here yesterday. F
- (2) According to Sri Tanjong assemblyman Jimmy Wong, he was made to understand that the Plaintiff, represented by Bishop James Wong, has filed an application for committal proceedings against the developer, Jeramas Sdn Bhd and its managing director, Datuk Seri Kong Hoi Ching. G
- (3) The committal proceedings was filed for the court to make an order to mete out punishment to the party or parties, who refused to abide to a court ruling or order. H
- (4) Given that the nature of the breach (contempt of court) which is a criminal offence, should the court allow this application, the company's director, Datuk Seri Kong Hoi Ching, may likely be sent to prison.
- (5) Jimmy, who is assistant Minister in the Chief Minister's Department, said on reflection, the case had gone on for more than a decade and still justice had not been served. Clearly and unequivocally, the developer has breached the Court order, he said. I
- (6) He said that the developer's defiance to not abide to the Court order shows disrespect for the rule of law and legislations of the country.

- A** (7) 'We must allow the law to take its course to restore the trust and confidence of the public towards the judiciary' he said.
- (8) Jimmy added that the Plaintiff had indicated, and they wish to reiterate here, that it is never their intention to commit him to prison, had he chose to abide to the Court order. On the fulfilment of the 100 days' promise,
- B** Jimmy said he concurs with the move by the Plaintiff to take legal action against the developer.
- (9) He said many have advised him to do crowd funding to fund the demolition cost which he did not agree to, simply because the developer must be held responsible for its actions and cannot be allowed to get off scot free.
- C** (10) 'Why must the people be the ones to clean up the mess left by the errant developer who obstruct justice and do not respect the rule of law?' he asked.
- D** (11) As the people's representative here, Jimmy said he has the obligation to protect the green lungs areas of Tawau and the interests of the Tawau people.
- (12) 'Should we choose to pay the costs ourselves, we would be opening the floodgates to more irresponsible and rogue developers, as they would know for sure that at the end of the day, they will not be the ones who will be held responsible' Jimmy said.
- E** (13) Again, I must stress that there is a due process in serving justice and the law must take its course. It is important that the building is demolished and the place restored back to its original position. However, it is also equally important to ensure that the rule of law and due process are respected. After all, this is the fundamental principle that distinguishes us as a democratic country from those non-democratic ones,' he said.
- F** (14) I will let the people decide whether I have broken my promise he said.
- G** (15) In other words, the High Court order still stands, and the developer is compelled to demolish the unfinished building within six months.

THE ISSUES IN THIS APPEAL

- H** [9] In this appeal, it was argued that the learned JC had erred in holding that the impugned statements were not defamatory of the appellants. It was argued that the natural and ordinary meaning of the words used meant and were understood to mean that the appellants, amongst others deliberately built an
- I** illegal building, had acted in breach of a court order for more than a decade, were in contempt of court, guilty of criminal offences warranting imprisonment, lacked integrity and did not respect the rule of law, obstructed the administration of justice and eroded public confidence in the judiciary and were irresponsible and rogue developers.

[10] Next it was also argued that the learned JC erred in law and misdirected himself in holding that the words used were not defamatory by wrongly relying on *Dr Shaari Isa & Anor v Tan Sri Harris bin Mohd Salleh* [2020] 4 MLJ 229; [2020] 4 CLJ 40, to require the appellants to plead and prove the defamatory meaning of each individual word or sentence, instead of considering the statement as a whole.

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[11] In respect of the defence of justification, the appellant also took the position that the learned JC erred in holding that the defence of justification and fair comments were available to the respondent as the respondent had failed to properly particularise the defences of justification and fair comment as required under O 78 r 3(2) of the Rules of Court 2012 ('the pleadings point').

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[12] Similarly, it was argued that the defence of qualified privilege was also not proven as the respondent had no duty to communicate the allegations to the public and the public had no corresponding legitimate interest to receive them, the facts did not support the defence and the respondent was motivated by improper purposes rather than legitimate duty.

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[13] Finally, it was argued that the respondent was actuated by malice, which could be inferred from his failure to verify the facts or seek legal advice despite knowing committal proceeding was a complex issue, not informing that the first committal application was dismissed and his longstanding animosity with the second appellant who had previously exposed the respondent's own wrongdoing in occupying public land.

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OUR DECISION

[14] After readings the written submission and hearing the oral submissions of the parties, we are of the view that there are no reasons for this court to interfere with the decision of the learned JC. We accordingly dismissed the appeal with costs for the following reasons:

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[15] In this appeal, we have considered the appellant's arguments on the learned JC's reliance on the case of *Dr Shaari Isa* as reflected in para 42 of the GOJ which was heavily relied by the appellant. In our view, the decision of the learned JC does not amount to a misdirection which merits the intervention of this court. This is because in arriving at his decision the learned JC had also relied on other trite case laws on defamation such as *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 729, *Lewis and another v Daily Telegraph Ltd*; *Same v Associated Newspapers Ltd* [1963] 2 All ER 151, *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 and *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461.

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- A [16] In the present case as can be observed from the following paragraphs of the GOJ which is reproduced below showed that the learned JC had adopted the approach as explained in one of the trite case laws on this point ie, *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461, where the Court of Appeal (per Gopal Sri Ram JCA, as His Lordship then was) held:
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C [1] The first task of a court, in an action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. This is a question of law. Having decided the question, the next step is to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the case.

[17] At paras 40 and 41 of the judgment, the learned JC states as follows:

- D [40] It is observed that the plaintiffs have omitted to include and plead several material passages or paragraphs from the news articles in their statement of claim. These omitted passages are pertaining to the developer exercising their right to due process by appealing against both the High Court judgment made by the High Court, Tawau on 23 October 2009 ('the 2009 judgment') which ordered, inter alia, the demolition of the unfinished structures and the judgment dated 10 June 2016 allowing the application to amend the 2009 judgment to expressly include the demolition order ('the 2016 judgment'). The appeals which took several years to complete were dismissed and the 2009 judgment and the 2016 judgment was affirmed by the Court of Appeal and the Federal Court in two separate appeals.
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- F [41] Reading the news articles as a whole, in essence, the defendant is stating the fact that the litigants had filed an application for committal against the plaintiffs for not complying with the 2009 judgment and the 2016 judgment which had, inter alia, ordered the plaintiffs to demolish the uncompleted structure. The plaintiffs had, despite having knowledge of the said court judgment and order, failed to comply with the order of the court to demolish the uncompleted structure. In line with his election promise, the defendant supports the application for committal made by the litigants. In the event the court allows the application for committal, the developer would be subject to legal sanctions. Therefore, the defendant urged the developer of the unfinished building on an open space in Sabindo to demolish it as soon as possible or risk being hauled up for contempt of court. The defendant did not say that the second defendant will definitely go to prison. The defendant said that 'should the court allow this application (for committal), the company's director, Datuk Seri Kong Hoi Ching, may likely be sent to prison'. The defendant also said that 'there is a due process in serving justice and the law must take its course'. From the context and circumstances of the publication, the ordinary, fair minded and reasonable reader would think or understand that in accordance with the due process of the law, the plaintiffs would exercise their legal rights to dispute the application for committal or in the event that the application is allowed, the plaintiffs may appeal against the decision on committal to the appellate courts as they had done so in respect of the 2009 judgment and the 2016 judgment.
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[18] In regards to the findings in the above paras (40 and 41), it is clear that

the learned JC, in our view had not only considered the impugned statements in its natural and ordinary meanings but had taken into consideration the whole article. This court in the case of *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700 reiterated that impugned statements must be viewed not in isolation, but rather in the context of the totality of the whole statement of which the impugned statement was but a part thereof.

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[19] Having considered the ordinary and natural meaning and taking into consideration the whole article, the learned JC concluded that the impugned statements were not defamatory. The learned JC then went on to consider the defences raised by the respondent in the event his findings that the impugned statements were not defamatory was wrong.

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[20] The respondent in this case have raised the defence of justification, fair comment and qualified privilege.

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[21] In determining whether the respondent has succeeded in proving the defence of justification which is a complete defence, it is necessary to consider the findings of the learned JC on this issue which can be found in paras 87 to 91 of the GOJ which we shall deal shortly.

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[22] In arguing that the learned JC erred in finding that the defence of justification was made out, the appellant submitted that the learned JC's reliance on the grounds of decision given by the High Court in Tawau case was flawed as the said decision did not address the sting of the defamatory words published and also the grounds of decision given in a court case are not evidence of the correctness or truths of facts stated in the said grounds of decision, We have considered the submission on this point, and we are unable to agree with the appellants' arguments. In the present appeal, the learned JC in arriving at the decision that the defence of justification has been proved stated as follows:

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[85] It is not in dispute that the first plaintiff was dissatisfied with the 2009 Judgment and launched an appeal against the said decision. The Court of Appeal upheld the decision of the Tawau High Court. The first plaintiff applied and obtained leave from the Federal Court to appeal against the decision of the Court of Appeal on 21 February 2012. The following question of law, that is, whether it is lawful for the court, by way of mandatory injunctive relief on the ground of nuisance, to direct the first defendant to remove or demolish the structure erected on the state land by the Tawau Municipal Council and the first defendant in the joint venture, whereby the said structure was subsequently accepted and retained by Tawau Municipal Council and/or the State Government of Sabah. The first plaintiff's appeal was dismissed by the Federal Court. See p 13 of DSBOD (Ed 15), This clearly shows that the plaintiffs are well aware of the demolition order in the 2009 judgment and had appealed against the said 2009 judgment and order to the Court of Appeal and the Federal Court.

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- A** [86] With the dismissal of the said appeals, the demolition order stands and is valid. It is the duty of every person against whom a Judgment or order is made by the court to obey it unless it is set aside. In *Lee Tain Tshung v Hong Leong Finance Bhd* [2000] 3 MLJ 364; [2000] 4 CLJ 15 the Court of Appeal elucidated that:
- B** It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. 'A party who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it ... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null and void — whether
- C** it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question: that the course of a party knowing of an order, which was null and irregular and who might be affected by it was plain.
- D** He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.' (per Lord Cottenham LC in *Chuck v Cremer* [1846] Cooper temp Cottenham 205, 338.) Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court ... is in contempt and may be punished by committal or attachment or otherwise,
- E**
- F** [87] Following the dismissal of the first plaintiff's appeal by the Federal Court, the plaintiffs did not comply with the 2009 judgment to remove or demolish the unfinished structure. This led to the filing of the first application for committal against the first plaintiff. However, the sealed 2009 judgment omitted to include the order for the removal or demolition of the unfinished structure even though the same was clearly mentioned in the grounds of decision of the 2009 judgment. This was the main reason for the dismissal of the first application for committal. See p 47 of PBOD (encl 10). The 2009 judgment was amended by the 2016 judgment to include the order for removal or demolition of the unfinished structure. The
- G** plaintiffs still did not comply with the amended 2009 judgment to remove or demolish the unfinished structure which stood on a public open space. Instead, the plaintiffs appealed against the 2016 judgment all the way to the Federal Court but was unsuccessful. The 2016 judgment was also affirmed by the Court of Appeal and the Federal Court.
- H** [88] By a letter before action dated 12 January 2018 issued by the former advocates of the plaintiffs in the Tawau Suit (Civil Suit No T (21)-52 of 2005 and T (21)-53 of 2005) to the second defendant (pp 897–88 of PBOD), it was stated as follows:
- I** We refer to the Demolition Order of the High Court dated 10th June 2016 which was upheld by the Court of Appeal on 24th March 2017 and the Federal Court on 12th October 2017. The said Demolition Order was served on you on 2nd May 2017.
- We have on 14th December 2017 written to Jeramas Sdn. Bhd.'s solicitors regarding this matter who replied that they had no instructions to deal with the matter.

We wish to inform that we are yet to receive the sealed copies of the Court Order from the Court of Appeal and the Federal Court. Pending receipt of the sealed orders from the Court of Appeal and the Federal Court, we are instructed to enquire if you, as Managing Director of Jeramas Sdn. Bhd. are prepared to proceed to dismantle, remove and clear the existing uncompleted structure on the area of the land comprising Block D without the necessity of the enforcement of the said Demolition Order granted by Her Honourable Judge YA Datuk Yew Jen Kie on 10th June 2016.

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Our clients are prepared to cooperate fully with you to have the uncompleted structure removed and cleared in any manner they can. In this regard, please let us know within fourteen days of receipt of this letter when you will commence the demolition works.

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Please acknowledge receipt by signing and returning the duplicate of this letter to us.

[89] Despite the said letter before action, the plaintiffs did not take heed of the letter and the 2009 and 2016 judgments to remove or demolish the uncompleted structure. This resulted in the plaintiffs in the Tawau Suit filing a second application for committal against the plaintiffs on or about 17 July 2018 and complaining about the non-compliance of the 2009 and 2016 judgments to the defendant who is the State Assemblyman for Sri Tanjung, Tawau. A few days after the filing of the second application for committal, the defendant issued the press statement which was published in the news articles on 19 July 2018. The second application for committal was unsuccessful due to non-service of the sealed amended 2009 judgment.

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[90] The dismissal of the second application for committal does not detract from the fact that an order for the removal or demolition of the unfinished structure was made by the High Court in the 2009 judgment and the 2016 judgment. The said judgment and demolition order was upheld and affirmed by the Court of Appeal and the Federal Court twice. The plaintiffs did not abide by the 2009 judgment to remove or demolish the unfinished structure despite the issuance and receipt of the letter before action. The defendant did not say that the second plaintiff will definitely go to prison for contempt of court. The defendant only said the second plaintiff would be subject to legal sanctions or may likely be sent to prison should the court allow the committal proceedings and 'there is a due process in serving justice'.

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[91] From the above evidence and facts, this court finds on a balance of probabilities that the material statements in the news articles are true and there is substantial justification of the whole of the alleged libel. It is not necessary to prove the truth of every word of the alleged libel.

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[23] From the findings of facts above which were amply supported by the evidence in the trial, the fundamental facts established by the evidence are these: (i) the existence of valid and binding demolition orders against the appellants which were affirmed by the Court of Appeal and the Federal Court; (ii) the appellants' failure to comply with those orders despite having

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- A knowledge of the same; and (iii) the resulting commencement of committal proceedings against the appellants. These in our view are sufficient to establish the essential truth of the defamatory ‘sting’ that the appellants breached the court orders. In the circumstances, we do not see any reasons to disturb the findings of facts made by the learned JC. In the case of *MMC Oil & Gas Engineering Sdn Bhd v Tan Bock Kwee & Sons Sdn Bhd* [2016] 2 MLJ 428; [2016] 4 CLJ 665 (CA), Her Ladyship Nallini Pathmanathan JCA (as she then was) had succinctly lays down the principles of appellate intervention as follows:
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- C [5] As this matter comes before this court on appeal after a full trial, this court is bound to have regard to the limited power of an appellate court to reverse findings of fact of the judge who has heard the evidence. It is a long settled principle, stated and restated both domestically and in wider common law jurisprudence, that an appellate court should not interfere with the trial judge’s conclusions on primary facts unless it is satisfied that he was plainly wrong.
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- E [24] On the pleadings points that was raised by the appellant; after carefully considering the arguments put forward by the appellants, the respondent’s response, and the learned JC’s decision on the pleading issue, we are of the view that the appellants’ claim that the defences of justification and fair comment cannot be relied upon due to insufficient particulars is without merit.
- F [25] The appellants argue that under O 78 r 3(2) of the Rules of Court 2012, the respondent’s failure to clearly state which parts of his statement were facts and which were comments, and to provide details of the facts supporting the truth of those factual claims, is enough to dismiss the respondent’s defence of justification outright.
- G [26] However, we respectfully disagree with the appellants’ position. It is important to note that the appellants’ own pleadings on the alleged defamatory meanings were also lacking in specificity. The appellants did not pinpoint the exact statements said to carry those meanings and did not claim any legal innuendo. Instead, they relied on the articles in a general, broad manner. Given this, we are of the view that the respondent makes a compelling argument that it would be unfair to expect the respondent to dissect every single sentence of his statement and label it as fact or comment when the appellants’ own case was so vaguely presented.
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- I [27] Certainly, the respondent could have provided more detailed particulars. But considering how the appellants presented their case, the lack of extensive particulars, in our view was not fatal. The core of the defences, that the respondent’s statements were based on established facts about the Sabindo dispute, was reasonably clear. We are also of the view that the appellants have not demonstrated that the way the defences were pleaded caused them any

significant prejudice. As the learned JC rightly noted, the appellants were fully aware of the nature of the respondent's case and had every chance to either ask for more particulars or present evidence to challenge the pleaded defences. The appellants did the latter vigorously.

[28] In view of our findings that the learned JC was right in arriving at his decision that the defence of justification was successfully proven and the said defence is a complete defence, we are of the view that there are no merits in the appeal and there is no necessity for us to make further findings of the other defences raised by the appellants in this appeal.

[29] For the reasons enumerated above, we dismissed the appellants' appeal and affirm the decision of the learned JC with costs of RM20,000 to be given to the respondent subject to the payment of allocatur.

Appellants' appeal dismissed; decision of JC affirmed with costs of RM20,000 to be given to respondent subject to payment of allocatur.

Reported by Dzulqarnain Ab Fatar

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